



## Department of Health

25/03/2015

DE00000926197

Dear Sir, Madam,

Thank you for your request of 10 March 2015 under the Freedom of Information Act (2000). Your exact request was:

*"You state:*

*"Information on aggregating requests is also set out in Section 12(4)(a) of the FOI Act which states that:*

*"... where two or more requests for information are made to a public authority by one person the estimated cost of complying with any of the requests is to be taken to be the total cost of complying with all of them."*

*My response to this is:*

*This is contradictory as this FOI is in the public domain for far more than one person to see or benefit from the response or information.*

*You state:*

*"However, it is being withheld under Section 22, which states that public bodies are not obliged to disclose information that is intended for future publication.*

*Section 22 is a qualified exemption, and we are required to assess as objectively as possible whether the balance of public interest favours disclosing or withholding the information.*

*In general, there is a strong public interest in information being made as freely available as possible. However, further work is currently taking place on the review to reflect an expanded remit to take into account the NHS Five Year Forward View publication.*

*Our view that Section 22 applies to your request is based on the judgement that the public interest will be better served by general publication, in due course, of information describing the outcome of the review when it is complete rather than by disclosure now, to a single individual, of incomplete and therefore potentially misleading information.*

*As such, we consider that releasing this information before its expected publication date would not be in the public interest. The full report will be published in due course. "*

*My response to this is:*

*(1) the law ([https://ico.org.uk/media/for-organisations/documents/1172/section\\_22\\_information\\_intended\\_for\\_future\\_publication.pdf](https://ico.org.uk/media/for-organisations/documents/1172/section_22_information_intended_for_future_publication.pdf)) states that "in all the circumstances it is reasonable to withhold the information prior to publication." I believe that DoH is abusing this Section as it is *\*not\** reasonable to withhold the information (see (2) ).*

*(2) There is no reasonable basis to consider it preferable for public interest to delay releasing the information - the public wants this information now. As before stated, irrespective of the remit or future plans it is the *\*findings\** of Lord Rose's report that the public have a right to know. Findings are based on past performance, the intentions of DoH to address any failings in the future follows on from that, but is not the same information being requested. DoH's view is biased - it is not the view of the general public who you serve and who pay for you to exist. Bias means your view is *\*not\** reasonable therefore cannot be "as objective as possible" or the limits of "as possible" are not neutral enough. It is not misleading if DoH makes it clear that plans to address failings exist, the public does not need to know the specifics of what the plans are to avoid being misled. It is far more misleading to hide this report from the public when knowledge of it's existence is out there and there is already a wealth of information on NHS failings in the public arena, by organisations such as the Patients Association and Healthwatch, hence Parliamentary inquiries into said failings.*

*(3) Please give a time limit on what you mean by "in due course". This is a vague statement and is widely open to abuse.*

*(4) A representative of an independent organisation needs to see the report to ascertain whether your use of Section 22 is valid. I would suggest the head of the Patients Association.”*

The Department has responded to you in previous correspondence (Ref: DE00000925684, DE00000925685 & DE00000925686) and we hold no further information to satisfy this new request. The Freedom of Information Act places a general duty on public authorities to give access to official information. However, the Act also provides an exception to that duty for requests that are repeated under Section 14(2) of the FOI Act:

*Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.*

With regards to point (3) of your request specifically, the Department is not obliged to provide clarification as to an expected time limit for publication. To quote directly from Section 22 of the Act:

*22.—(1) Information is exempt information if—  
(a) the information is held by the public authority with a view to its publication, by the authority or any other person, **at some future date (whether determined or not)**,*

Furthermore, the use of Section 22 in relation to your previous request has been verified by a Senior Civil Servant with ultimate responsibility for the policy area in question. In answer to point (4), therefore, the Department has fulfilled its obligation under the FOI Act.

I should explain that the FOI Act concerns the transparency of information held by public authorities. It gives an individual the right to access recorded information held by public authorities. The FOI Act does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

If you have any queries about this email, please contact me. Please remember to quote the reference number above in any future communications.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Head of the Freedom of Information Team

Department of Health  
Room 520  
Richmond House  
79 Whitehall  
London  
SW1A 2NS

Email: [FreedomofInformation@dh.gsi.gov.uk](mailto:FreedomofInformation@dh.gsi.gov.uk)

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Department. The ICO can be contacted at:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely,

Graham Sale

Freedom of Information Officer  
Department of Health

[FreedomofInformation@dh.gsi.gov.uk](mailto:FreedomofInformation@dh.gsi.gov.uk)